

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9166-1]

Notice of Availability of Class Deviation; Disputes Resolution Procedures Related to Enforcement Actions Associated With Leaking Underground Storage Tank (LUST) Cooperative Agreements Distributing Funds Under the American Reinvestment and Recovery Act of 2009 (ARRA)**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of availability.

SUMMARY: This document provides notice of availability of a Class Deviation from EPA's assistance agreement dispute procedures and also sets forth the procedures that will apply to the resolution of disputes that may arise in connection with certain enforcement actions taken by EPA on State cooperative agreements awarded under section 9003(h) of the Solid Waste Disposal Act with LUST funds appropriated by the ARRA. Enforcement actions affected by this alternative dispute resolution procedure are those actions, including suspension of performance and potential partial or complete cooperative agreement termination, associated with the obligation and expenditure of funds under the following term and condition: "The recipient shall obligate funds for contracts, subgrants or similar transactions for at least 35 percent of funds, and expend at least 15 percent of funds within nine months of this award. EPA will consider the recipient's failure to comply with this requirement as a material failure to perform, which may warrant appropriate enforcement action under 40 CFR 31.43" (hereafter referred to as the 35/15 term and condition).

Currently, with respect to States and local governments, assistance agreement disputes and disagreements are resolved in accordance with EPA assistance agreement disputes procedures at 40 CFR 31.70. EPA has determined, however, through a Class Deviation, that these procedures are not practicable to use for LUST disputes and that it is appropriate to replace those procedures with the procedures contained in this document. EPA's preferred course of action would be for the Agency and the State to resolve issues associated with the 35/15 term and condition by mutual consent and should the need arise to partially or completely terminate the cooperative agreement by mutual agreement. If appropriate, EPA will take additional enforcement actions due to

the State's noncompliance with the 35/15 term and condition.

DATES: These procedures are effective as of June 23, 2010.

FOR FURTHER INFORMATION CONTACT: Steven McNeely, (703) 603-7164.

SUPPLEMENTARY INFORMATION: OMB guidance issued under section 1512 of the Recovery Act of the interim final regulations for implementing the Recovery Act, Code of Federal Regulations (CFR) in 2 CFR 176.20(c) provides that EPA "shall" take "appropriate" enforcement or termination action under 40 CFR 31.43 if recipients of Recovery Act Funds fail to comply with reporting requirements or other terms and conditions. EPA's Office of Underground Storage Tanks (OUST) issued the "Guidance to Regions for Implementing the LUST Provisions of The American Recovery and Reinvestment Act of 2009" on June 11, 2009. Terms and conditions outlined in that guidance specify that "the recipient shall obligate funds for contracts, subgrants, or similar transactions for at least 35 percent of funds, and expend at least 15 percent of the funds within nine months of their award." EPA must obligate LUST Recovery Act resources by awarding assistance agreements, contracts or interagency agreements by September 30, 2010 if not sooner.

EPA's Office of Grants and Debarment has authority under 40 CFR 31.6(d) to approve class deviations from EPA program specific regulations. EPA's dispute resolution procedures at 40 CFR 31.70 are not prescribed by OMB Circular A-102 and are therefore specific to EPA programs.

As described in 40 CFR 31.70, the dispute resolution process can involve up to four levels of review and take several months to complete. Specifically, an entity disputing a decision can attempt to resolve the issue at the lowest level possible, request a final Agency decision, and request a reconsideration of the final decision. A possible fourth step is an EPA headquarters discretionary review of a final Regional decision. This timeframe is too long to permit the Agency to meet ARRA requirements for timely enforcement action and reallocation of potentially de-obligated ARRA funds.

EPA's Office of Grants and Debarment has therefore issued a Class Deviation under 40 CFR 31.6(d) to streamline the 40 CFR 31.70 procedures. The Class Deviation will allow the Agency to comply with ARRA requirements and at the same time provide States with a meaningful disputes resolution process in the event a State disagrees with

enforcement action decisions associated with the 35/15 term and condition.

Statutory and Executive Order Reviews: Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments. This action does not have tribal implications, as specified in Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.* generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this final grant action contains legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit this action in its report to Congress under the Act.

LUST ARRA Assistance Agreement Enforcement Decision Dispute Resolution Procedures

EPA establishes LUST ARRA Assistance Agreement dispute resolution procedures as follows:

1. The authority citation for the LUST ARRA assistance agreement disputes resolution procedures in this document is the Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301(3), 40 CFR 31.6(d) and 40 CFR 31.70.

2. The disputes resolution procedures that will apply to LUST ARRA assistance agreement disputes

associated with the 35/15 term and condition are as follows:

Dispute Resolution Procedures

1. After receiving updated State obligations, expenditure, draw down data and State plans associated with the future spending of unobligated and unspent ARRA funds within the cooperative agreement's existing period of performance, EPA will identify appropriate enforcement actions if a State materially fails to comply with the 35/15 term and condition. Enforcement actions could include the partial or complete termination of a State's LUST ARRA cooperative agreement and an associated amount of funding intended for de-obligation. Should the Agency suspend performance and seek to terminate a LUST ARRA cooperative agreement and de-obligate funding, it will notify the relevant State as soon as possible and no later than *July 9, 2010, unless EPA waives this deadline.*

2. If a State disagrees with EPA's decision to suspend performance and to terminate the cooperative agreement and de-obligate funds or disagrees with the amount of funds that the Agency determined is appropriate for termination and de-obligation, then the State must file a written request for reconsideration within three (3) business days of receiving this *notification of suspension of performance and intent to terminate the cooperative agreement and to de-obligate funding.* EPA may grant a State a brief extension of time to submit its arguments, if the State demonstrates that there are compelling reasons for such an extension. Any detail or arguments regarding why the State disagrees with these decisions shall be provided with the request for reconsideration.

3. The written request for reconsideration shall be sent via E-Mail (PDF) or Facsimile to Carolyn Hoskinson at hoskinson.carolyn@epa.gov with copies sent to Adam Klinger (klinger.adam@epa.gov) and Steven McNeely (McNeely.Steven@epa.gov) *If such material is to be sent by fax, please direct to Mr. Steven McNeely and use 703-603-9163.*

4. The Assistant Administrator for the Office of Solid Waste and Emergency Response (OSWER) or his designee shall review all reconsideration submissions, and shall issue a decision in writing within three (3) business days of receiving the reconsideration request. This deadline may be extended briefly

for good cause. This decision shall be the final decision of the Agency.

Howard F. Corcoran,

Director, Office of Grants and Debarment.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-9167-1; Docket ID No. EPA-HQ-ORD-2010-0395]

Draft EPA's Reanalysis of Key Issues Related to Dioxin Toxicity and Response to NAS Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: On May 21, 2010, EPA released the draft report entitled, "EPA's Reanalysis of Key Issues Related to Dioxin Toxicity and Response to NAS Comments" (EPA/600/R-10/038A) for independent external review, and public review and comment (75 FR 28610). Written comments on the draft report were to be submitted to EPA by August 19, 2010 (a 90-day public comment period). Since release, the Agency has received several requests for additional time to submit comments. In response to these requests, the EPA is extending the public comment period another 30 days until September 20, 2010 (a 120-day public comment period).

This draft report responds to the key recommendations and comments included in the National Academy of Sciences (NAS) 2006 report. In addition, it includes new analyses on potential human effects that may result from exposure to 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD). These analyses have not been in previous versions of draft reports related to EPA's dioxin reassessment activity. This draft report is now considered to be under EPA's Integrated Risk Information System (IRIS) program, and thus, the new IRIS process announced in May 2009 (<http://www.epa.gov/iris/process/>) is being followed. Per the May 2009 process, this draft report is beginning Step 4— independent external peer review and public review and comment. This draft dioxin report was prepared by the National Center for Environmental Assessment (NCEA) within the EPA Office of Research and Development (ORD).

The draft document, "EPA's Reanalysis of Key Issues Related to Dioxin Toxicity and Response to NAS

Comments," was also being provided to EPA's Science Advisory Board (SAB), a body established under the Federal Advisory Committee Act, for independent external peer review. The SAB will convene an expert panel composed of scientists knowledgeable about technical issues related to dioxins and risk assessment. The SAB is holding a public teleconference on June 24, 2010, and a public panel meeting on July 13-15, 2010. The SAB peer review meetings were announced by the SAB staff office in a separate May 24, 2010, **Federal Register** Notice (75 FR 28805). EPA intends to forward all public comments submitted before July 7, 2010, in response to this notice to the SAB peer review panel for their consideration. Members of the public who wish to ensure that their technical comments are provided to the SAB expert panel before each meeting should also e-mail their comments separately to Thomas Armitage, the SAB Designated Federal Officer at armitage.thomas@epa.gov, following the procedures in the **Federal Register** Notice announcing the SAB public meetings. When completing this draft dioxin report, EPA will consider any written public comments that EPA receives in accordance with the detailed instructions provided under **SUPPLEMENTARY INFORMATION** in **Federal Register** notice (75 FR 28610). The public comment period and SAB external peer review are independent processes that provide separate opportunities for all interested parties to comment on the draft report.

EPA is releasing this draft report solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This draft report has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

DATES: The public comment period began on May 21, 2010, and ends on September 20, 2010. Comments should be in writing and must be received by EPA by September 20, 2010.

Due to the timing of the SAB's peer review meeting, EPA can only guarantee that those comments received by July 7, 2010, in response to this **Federal Register** notice will be provided to the SAB panel prior to the SAB meeting. Comments received after July 7, 2010, will still be provided to the SAB panel and will also inform the Agency's revision of the draft report.

ADDRESSES: The external review draft titled, "EPA's Reanalysis of Key Issues Related to Dioxin Toxicity and